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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 NYP HOLDINGS,

4 Plaintiff,

New York, N.Y.

5 v.

14 Civ. 8310 (VM)

6 NEW YORK POST PUBLISHING,  
7 INC.,

8 Defendant.

-----x

9 October 31, 2014

10 9:10 a.m.

11 Before:

12 HON. VICTOR MARRERO,

13 District Judge

14  
15 APPEARANCES

16  
17 DAVIS WRIGHT TREMAINE, LLP  
Attorneys for Plaintiff

18 BY: LAURA R. HANDMAN  
19 SAMUEL M. BAYARD

20 TODD A. ZUCKERBROD, P.A.

Attorney for Defendant New York Post Publishing, Inc.

21 BY: TODD A. ZUCKERBROD

22 STEVEN JUDE HOFFENBERG  
23 Pro Se Defendant

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1           THE COURT: This is a proceeding in the matter of NYP  
2 holdings v. New York Post Publishing, Inc. It is docket number  
3 14 Civ. 8310.

4           The court scheduled this proceeding upon request of  
5 the plaintiff for an order to show cause for preliminary  
6 injunction. The court issued that order on October 16. I had  
7 directed the parties to submit appropriate briefing and appear  
8 at this hearing today.

9           The court has received submissions from both sides.

10          First, the court has received from the defendant what  
11 purports to be a motion requesting the court's extension of  
12 time for the United States' mandated appearance under the Hoff  
13 restitution victims' payments from two defendants that are  
14 demanded in the Mandatory Victims Restitution Act, whereby the  
15 U.S.A. must litigate for the victims. In that motion the  
16 defendant asks the court extension of time allowing for the USA  
17 to appear in the action at bar mandated by the Mandatory  
18 Victims Restitution Act.

19          The court also received a request from the defendant,  
20 Mr. Hoffenberg, appearing *pro se*, to be allowed to bring two  
21 electronic devices, an iPhone and an iPad, into the courtroom.  
22 The court granted that request, but stresses at this point that  
23 the request is granted on the condition that the defendant  
24 abide by all of the rules that pertain to the use of electronic  
25 devices in the courtroom when allowed. Those are set forth in

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1 the standing order permitting certain litigants to bring such  
2 devices into the courtroom. Any use of the device in any way  
3 that may interfere with the proceeding or may be used for  
4 improper purposes, purposes not permitted, such as recording or  
5 taking photographs, will lead the court to revoke that order.

6 Let me first note that the defendant was directed to  
7 respond to the plaintiff's order to show cause and submit any  
8 responsive papers by October 24, 2014. The only submission  
9 that the court received from the defendant in response to that  
10 order were the two motions that I have just referred to.

11 With regard to the motion characterized as requesting  
12 an extension of time for the United States' appearance in this  
13 action, the court finds that there is no relevance whatsoever  
14 of that matter, whatever the matter is referred to by the  
15 defendant in this proceeding; and, consequently, the court does  
16 not believe any action is necessary on that request other than  
17 to deny it on the grounds of irrelevance.

18 The court received from plaintiff a reply which  
19 presumably was triggered by the defendant's submission, and  
20 that, too is part of the record.

21 In this proceeding, the plaintiffs ask the court for  
22 injunctive relief under several statutes for trademark  
23 infringement in violation of the Lanham Act and trademark  
24 infringement, false designation of origin, and unfair  
25 competition also under the Lanham Act, trademark dilution under

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1 the Lanham Act, trademark cyber piracy under the Lanham Act,  
2 common law trademark infringement and unfair competition,  
3 trademark dilution in violation of New York General Business  
4 Law. However, the plaintiff seeks to enjoin join the  
5 defendants from infringing the New York Post marks, including  
6 but not limited to the New York Post Publishing, Inc.,  
7 trademark and the New York Post Publishing, Inc., domain name.

8 The court notes that the defendant individually,  
9 Stephen Jude Hoffenberg, made an appearance *pro se* and, as of  
10 this morning, there had been no appearance on behalf of the  
11 corporate defendant, although the court has some filing from a  
12 Mr. Todd Zuckerbrod, who apparently may be representing the  
13 corporate defendant.

14 Mr. Zuckerbrod, are you here and what is your status  
15 in this matter?

16 MR. ZUCKERBROD: I am here and I have been retained to  
17 represent the New York Post Publishing, Inc.

18 THE COURT: All right. Thank you.

19 Let's then proceed with the consideration of the  
20 plaintiff's request.

21 For the plaintiff?

22 MS. HANDMAN: Your Honor, this is Laura Handman, Davis  
23 Wright Tremaine. I am here with my colleague Sam Bayard and  
24 assorted counsel in the back there, including Ginny Gavenchak,  
25 the senior vice president and deputy general counsel of News

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1 Corporation.

2 I represent NYP Holdings, which is the publisher of  
3 the New York Post. The New York Post has been published under  
4 that name since 1934 and has been on the Web site since 1996  
5 under that name. NYP Holdings is the owner of a family of  
6 registered New York Post trademarks for newspapers, online  
7 content, mobile devices, and various and sundry other items.  
8 Seven of those marks have become incontestable.

9 Defendant says, You know we are the New York Post  
10 Publishing, Inc., and Steven Hoffenberg, the owner, CEO, and  
11 publisher; and they launched in September a competing news Web  
12 site, New York Post Publishing, Inc., and have announced plans  
13 that were to begin this month, actually, to print newspapers  
14 under that same name.

15 If I could just briefly review the history of some 20  
16 years ago:

17 Mr. Hoffenberg was the publisher of the New York Post  
18 for less than three months in 1993. He was at that time hoping  
19 to buy the New York Post, but that never happened because the  
20 SEC froze the assets of his company, Towers Financial.

21 NYP Holdings, in September of that year, acquired  
22 from New York Post Company all of the assets, including the  
23 trademarks; and the bankruptcy court, in September of 1993,  
24 also ordered and confirmed that purchase free and clear of all  
25 liens and encumbrances. We have attached in our reply the

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1 asset purchase agreement that makes that clear as well as  
2 the -- we cited the bankruptcy court docket where that order  
3 can be found. It is docket number 224. We have requested the  
4 actual order, and we still have not received that.

5 But other than Mr. Hoffenberg's say-so, there is not  
6 one document to support that he owns the New York Post  
7 trademarks, as he claims. And even if he did, that would  
8 not -- he has not used them, not he, not Towers Financial, not  
9 New York Publishing Company, Inc., has used those marks at all  
10 until just a month ago. So whatever rights he might have had,  
11 he has not used them, and that is the quintessential part of  
12 trademark.

13 The fact that he has a company called New York Post  
14 Publishing Co., that's a trade name. That signifies a  
15 business. That's not the same as trademarks, which are  
16 determined by use in connection with goods and services.

17 As to that, NYP Holdings and its predecessors have  
18 been using the New York Post marks since, as I said, 1934. So  
19 that's a prior use that trumps any subsequent use. New York  
20 Post Publishing company, which was formed in that window of  
21 time that Mr. Hoffenberg was publisher, has never used that  
22 name as a trademark until just in September. So, if anything,  
23 he is a junior infringing newcomer.

24 My client first learned of the intent to -- the New  
25 York Post Publishing Company was formed in 1993, but it ceased

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1 to exist in 1995 and lay dormant until just June of this year.  
2 We learned that Mr. Hoffenberg intended to reactivate that  
3 company when a lawyer contacted NYP Holdings and said, We are  
4 planning to reactivate the company and if you have any papers,  
5 please serve me, anticipating that, indeed, we would be in  
6 court today if they reactivated the company.

7 We sent promptly a cease-and-desist letter advising  
8 them that any use of New York Post Publishing Company would  
9 infringe our trademarks, that we would bring an action to  
10 prevent that, and that's indeed what we did on October 16.

11 The fact that he was able to form a company, as I  
12 said, does not give you rights to use it as a trademark. We  
13 have many authorities that we cited in our opening brief to  
14 that effect. One case that we pointed out in our reply that I  
15 think is particularly pertinent that Judge Cote decided and  
16 granted an injunction, that was the DeBeers -- the defendant  
17 there had formed a company called DeBeers Diamond Syndicate.  
18 It went dormant for 15 years, just as here, never used that as  
19 a trade name. Then he reactivated it, decided to start selling  
20 diamonds on the Internet.

21 Needless to say, the very iconic mark of DeBeers  
22 that's associated with diamonds brought a trademark  
23 infringement action for that use. The court said, first of  
24 all, the inactivity, the nonuse, you have abandoned whatever  
25 rights you had. Secondly, the mere fact that you have a

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1 company by that name doesn't give you a trademark, and the  
2 addition of names like "diamond" to the word "DeBeers" only  
3 makes it worse, since you are both in the same exact competing  
4 business.

5 That's exactly what we have here. On this Web site  
6 you have New York Post in big words, big black letters, and  
7 "Publishing, Inc." in small purple script. Even if it didn't  
8 have "Publishing, Inc.," it would be a trademark violation.  
9 But the addition only makes it worse, since we are both in the  
10 publishing business.

11 Then there are additional things on the site that add  
12 to that. There is a big feature that says "History of the New  
13 York Post, Future of the New York Post." In press releases  
14 Mr. Hoffenberg has said he is once again becoming the  
15 publisher, referring back to the two months plus that he was  
16 publisher of the New York Post in 1983.

17 It is further compounded by a cover of the New York  
18 Post that's on the Web site and, indeed, was submitted with the  
19 papers to your Honor, that says Hoffenberg saves The Post, and  
20 it is a mockup of the New York Post. Well, that's a fake  
21 cover. In fact, The Post cover said "Last Minute Deal Saves  
22 The Post. Never say die." But this cover of the post is right  
23 on the Web site and has all the other indicia of the New York  
24 Post on it.

25 In addition, they claim the lineage of the New York

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1 Post, tracing back New York publishing -- Post Publishing,  
2 Inc., to all the way back to Alexander Hamilton, which is,  
3 indeed, the lineage of the paper, but not of New York Post  
4 Publishing, Inc.

5 All of this establishes the likelihood of confusion  
6 and, indeed, Mr. Hoffenberg has not really challenged in any  
7 way the likelihood of confusion. In fact, he embraces it. He  
8 says he owns the New York Post. He claims all of this and  
9 embraces it, doesn't say, oh, yeah, readers will be able to  
10 discern the difference. And the readers here -- and these are  
11 all the *Polaroid* factors that I might say are met here in  
12 spades. The readers here are not the sophisticated diamond  
13 purchasers in the diamond case where Judge Cote found for the  
14 plaintiffs. This is readers who go to the newsstand, surf the  
15 web, and say, oh, New York Post. And the look and feel of the  
16 cite is very similar to ours as well.

17 So we think that the likelihood of confusion here is  
18 extremely strong and it is compounded by the fact of bad faith.  
19 Because, as I said, first of all, the marks are iconic.  
20 Everyone knows the New York Post, but particularly  
21 Mr. Hoffenberg, who was the publisher for three months. And to  
22 the extent there was any doubt, that was put to rest by the  
23 cease-and-desist letter that he received in June of this year,  
24 which he ignored and nonetheless went ahead and put up his New  
25 York Post Publishing Company, Inc., Web site.

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1           In addition to the -- if you look at the Web site, it  
2   is harmful and dilutes the New York Post brand because (a) it  
3   is of inferior quality. There is no original reporting. It is  
4   hasty rewrites and syndicated columns, not original reporting.  
5   But beyond that, it associates the New York Post with the  
6   serious criminal history that Mr. Hoffenberg has and associates  
7   it with such things as the dubious offer of \$1 million to  
8   anyone that comes up with a great scandal; that, coming from  
9   someone who owes \$476 million in restitution to the victims of  
10   his fraud, makes it particularly questionable.

11           It also raises the question of whether Mr. Hoffenberg  
12   would be able to pay damages or the New York Post Publishing  
13   Company would be able to pay damages, which makes the  
14   inadequacy of the damage remedy patent and the irreparable  
15   harm, the continuing irreparable harm to the New York Post that  
16   much more compelling, and the need for an injunction, immediate  
17   injunction, very warranted indeed.

18           So we believe we have a strong likelihood of success,  
19   indeed, I would say an overwhelming likelihood of success,  
20   irreparable harm, the balance of hardships are clearly in our  
21   favor, particularly because Mr. Hoffenberg decided to go ahead  
22   despite being on notice and actually inviting a lawsuit, which  
23   is indeed what he got.

24           I would say one other point. If your Honor does grant  
25   an order forbidding -- ordering him to cease and desist

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1 using newyorkpostpublishing.com, both as the trademark and as  
2 the domain name, and we would ask also any -- there are many  
3 representations that are being made about owning the New York  
4 Post, being the New York Post, affiliated, becoming the  
5 publisher of the New York Post. All of those, any use of the  
6 New York Post marks in that way were also ordered to be ceased  
7 and ordered to third parties, such as the Web host and domain  
8 name, that they cease providing hosting services. Because what  
9 happened here, when we noticed that the Web site was up, we  
10 immediately sent a letter to the host and domain name registrar  
11 asking them to take it down and the site was disabled, and then  
12 apparently it was put back up notwithstanding, and that's when  
13 we filed this action. So we would hope that those folks, once  
14 they get a notice of this order, would also cease providing  
15 those services so that the confusion to the public does not  
16 persist and the harm to the post is mollified.

17 And I would say one last point on the U.S. Attorney.  
18 I did reach out to them, and they have confirmed to me and have  
19 said that I could represent to you that they don't intend to  
20 intervene, which is consistent with your Honor's ruling on  
21 that.

22 THE COURT: Thank you.

23 Mr. Hoffenberg.

24 MR. HOFFENBERG: Good morning, your Honor.

25 THE COURT: You are appearing on your own behalf in

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1 this matter.

2 MR. HOFFENBERG: Yes, I am, sir. I am the defendant  
3 as well as New York Post Publishing, and I have asked counsel  
4 for New York Post Publishing, Inc., to accept my arguments as  
5 his arguments.

6 It has been interesting to hear what was said this  
7 morning about the history of the New York Post and Hoffenberg  
8 the defendant. None of it is true on the basis of the New York  
9 Post transactions between Hoffenberg and Rupert Murdoch  
10 personally, who is News Corporation's controlling shareholder.

11 The first question that I would like to make a record  
12 of, I don't think this court has jurisdiction. This is a  
13 bankruptcy case that is being relitigated under a trademark  
14 question that was settled in the bankruptcy court. Counsel for  
15 the plaintiff does not articulate one point about the standing  
16 order right in the counsel's Exhibit B in the filed reply where  
17 counsel for the plaintiff concedes that the defendant has the  
18 borrowing agreement for the trademark liens and control of the  
19 trademarks. It is right here, your Honor. The defendant has  
20 the liens and control of the New York Post trademarks.

21 Counsel does not address it, does not bring it to the  
22 court's attention. It was granted in the bankruptcy court, it  
23 is not part of plaintiff's papers, and it is ridiculous. It  
24 has never been satisfied, it has never been completed, and it  
25 is an issue that belongs in the bankruptcy court for

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1 determination first before it gets to this court, which is the  
2 appeals court for the bankruptcy court. I have no idea why we  
3 are here this morning. We belong in the bankruptcy court, your  
4 Honor.

5 I have a bankruptcy court order here from Towers  
6 Financial Corporation showing that items are open. I will be  
7 delighted to hand it to plaintiff's counsel and to the court if  
8 I may, sir.

9 May I do that?

10 THE COURT: You may submit anything you wish to  
11 submit.

12 MR. HOFFENBERG: Thank you, sir.

13 This is a court order with Towers Financial  
14 Corporation concluding hearing a final decree, page 4. It  
15 should be your attention where the judge says there are  
16 substantial open assets in my name that have never been  
17 concluded. May I submit this, Judge, Exhibit 1?

18 THE COURT: Give it to the clerk.

19 MR. HOFFENBERG: Thank you.

20 Your Honor, plaintiff files a declaration of Samuel M.  
21 Bayard, counsel at the table in front of the court, Exhibit B.  
22 Exhibit B is the entire docket of the New York Post bankruptcy  
23 proceedings that Rupert Murdoch was prohibited in participating  
24 in as well as News Corporation because there was a course  
25 ownership prohibition for News Corporation to be involved in

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1 the New York Post, and they could not have standing, your  
2 Honor, and that's why Rupert Murdoch asked the defendant  
3 Hoffenberg to front, be his partner, and save the New York Post  
4 at a cost of \$100 million to the defendant's holdings,  
5 towersinvestors.com, 200,000 restitution victims that plaintiff  
6 makes light of as if it doesn't matter, the restitution order.

7 Plaintiff says she spoke to the U.S. Attorney who says  
8 they are not going to appear. They don't have a choice, your  
9 Honor. They have to appear. It is a statute. They have to  
10 represent the restitution victims under the fund's Victims Act.  
11 This is absurd what I am hearing, your Honor, a complete  
12 injustice and miscarriage of law.

13 Forgive me, your Honor, for being passionate about  
14 this, but this is the restitution of 200,000  
15 towersinvestors.com victims that plaintiff is damaging this  
16 morning with misinformation and fabricated stories to this  
17 court.

18 Docket 13 and 14 of Plaintiff's Exhibit B is the  
19 docket of the bankruptcy court for the New York Post. The  
20 borrowing order is clearly ordered there from me, that I got in  
21 the bankruptcy court for the New York Post. Nowhere does  
22 plaintiff's counsel make one word mention of that, and I told  
23 them ten times and I told them --

24 THE COURT: Let me ask a question please.

25 The document you have just handed up contains numerous

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1 handwriting additions and comments. Were those in the original  
2 of this order?

3 MR. HOFFENBERG: The last page is the judge's  
4 writings, your Honor.

5 THE COURT: I am not talking about the last page. I  
6 am talking about the first page which has some block letter  
7 writing on top and --

8 MR. HOFFENBERG: The top page.

9 THE COURT: And the last page contains some block  
10 letter writing in apparently the same handwriting and it has a  
11 line that purports to say "by Judge below."

12 MS. HANDMAN: That is my writing, your Honor, and the  
13 judge's writing is the smaller letters in script in the  
14 pleading. Mine is printed. The judge is not printed. And the  
15 judge's writing on page 1 appears in the second paragraph and  
16 at the bottom of the page, right under the date stamp for  
17 December 29, 1999, Judge, on page 1.

18 On page 2 the judge's writing appears at the bottom of  
19 the page.

20 THE COURT: I do not understand why, if you were going  
21 to submit a document for this court's consideration, would you  
22 not submit the original without this substantial amount of  
23 alteration that makes it unclear exactly what the original  
24 purports to say.

25 Be that as it may, proceed.

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1           MR. HOFFENBERG: Your Honor, the defendant Hoffenberg  
2 is *pro se*. Therein, the defendant Hoffenberg has limited  
3 access to the transcripts of the Towers Financial Corporation  
4 final order that's in storage in Missouri. Said documents will  
5 be produced in front of this court in actual filed copy by  
6 Judge Abrams. We are doing that, your Honor. We just need a  
7 little bit more time. This was an expedited proceeding order  
8 to be completed in pleading form within days, not weeks, days.

9           I called counsel for the plaintiff. I said, you know,  
10 we have to get documents that's in storage, as they said they  
11 have to get documents that's in storage. We both have to get  
12 documents that are in storage in Missouri in the bankruptcy  
13 case of the New York Post. That's what we are relitigating  
14 here today, what occurred in 1993. Wherein the docket sheet is  
15 explicit that the New York Post liens of all trademarks belong  
16 to the defendant. They can't show your Honor on this docket  
17 sheet their Exhibit B how they own it because they don't. They  
18 do not own it. The defendant owns it. But they don't want to  
19 talk about that, your Honor. Why bother? It is only the  
20 truth. This is a fabricated set of pleadings that's a smoke  
21 screen for Rupert Murdoch, the controlling shareholder of News  
22 Corporation, who has done this in courtroom after courtroom  
23 after courtroom all over the world, where he sends in good  
24 folks, as these lawyers are good folks, who never spoke to  
25 Rupert Murdoch, never interviewed him, and have no

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1 understanding of my agreement with Rupert Murdoch in 1993.

2 None at all. All they are doing is filing voluminous papers  
3 that do not justify what the court docket says. The defendant  
4 controls the trademarks. It says so on their exhibit, your  
5 Honor. It is right here. It is their exhibit.

6 I came to them before the session started, your Honor,  
7 I said, Let's go have a conference. Let me show you that your  
8 pleadings are frivolous, because I know you didn't conference  
9 with Rupert Murdoch. They refused to meet with me. They  
10 wanted to take up the court's time and waste your time.

11 Here is the docket sheet. They don't control the  
12 trademarks. The defendant does. They don't have a court  
13 docket showing relief from this order of the bankruptcy court  
14 for the New York Post. They produced a transfer agreement  
15 signed by Stephen Bumbaca, a man that pled guilty for fraud for  
16 signing it. He is the man who pled guilty in the New York Post  
17 proceedings for tax fraud, for evasion of financial fraud, and  
18 he went to federal prison. That's the exhibit they produced as  
19 the controlling exhibit for the transfer of the trademark.  
20 That man can't even testify to the validity of his signature.  
21 He was a criminal when that occurred. He was committing crimes  
22 when that occurred.

23 In addition, they include a document here that's  
24 outrageous showing how they filed it by Squadron Ellenoff.  
25 That's the defendant's counsel, not their counsel. That's an

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1 amazing conflict of interest. He is the appearing counsel for  
2 the defendant in the bankruptcy court. They include that as  
3 their controlling document for filing this purported trademark.  
4 That belongs to the defendant. It is the defendant's counsel's  
5 filing. How can it possibly be theirs when it is the  
6 defendant's law firm that filed the trademark in question? It  
7 is unbelievable. What we are doing here? I don't quite  
8 understand. I will give you that exhibit so that it is clear,  
9 your Honor. I mean it is just incredible what they have done  
10 here. Incredible.

11 If you will bear with me for one second.

12 There it is. Exhibit B, supplemental declaration of  
13 Eugenia -- I am pronouncing it wrong. Forgive me. I will  
14 call her Ms. Gavenchak, senior vice president of News Corp. I  
15 am sure she is in the room someplace. Is she here? Are one of  
16 you Ms. Gavenchak? No. Are you Ms. Gavenchak?

17 MS. HANDMAN: Mr. Hoffenberg --

18 THE COURT: Mr. Hoffenberg, please address the court.

19 MR. HOFFENBERG: Forgive me. I just wanted to make  
20 sure she is here. This is her affidavit.

21 She submits this supplemental declaration showing the  
22 defendant's counsel filing their supposed trademark. How could  
23 that be? This is the counsel for the defendant, not the  
24 plaintiff. It can't be their trademark. He is the wrong  
25 lawyer. He doesn't represent them. He represents the

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1 defendant -- this is ridiculous -- Squadron Ellenoff & Plesent,  
2 in this proceeding of the trademarks that's being relitigated  
3 in this courtroom represented the defendant. Now he represents  
4 the plaintiff. That's amazing, totally amazing. And now they  
5 want credit, your Honor, for defendant's counsel filing a  
6 trademark that they claim they control when the court record  
7 says the defendant controls it.

8           Why are we here your Honor? Let us go to the  
9 bankruptcy court and straighten this out or let us do  
10 mediation. This is a document case, your Honor, for the  
11 bankruptcy records. These people are honest people, but they  
12 never interviewed Rupert Murdoch who made the deal with the  
13 defendant Hoffenberg. They have no idea of this case in 1993.  
14 And the lawyer from News Corp. that's in the audience, she has  
15 no clue what happened in 1993, none at all. So she brings them  
16 into this courtroom and makes up this cock-and-bull story that  
17 these documents belong to Rupert Murdoch when they don't. They  
18 belong to the defendant.

19           It is impossible for them to bring this claim,  
20 impossible. The money lien agreement is here, docket 13 and 14  
21 in their exhibit. It is right here, your Honor. It is right  
22 here. It is their exhibit, Exhibit B, Exhibit -- let me get  
23 you the docket for the bankruptcy to -- forgive me for one  
24 second, your Honor. The bankruptcy entire docket is in the  
25 declaration of Samuel M. Bayard. It is docket B, the whole

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1 docket. They can't justify one claim they articulated in front  
2 of this court, not one, because the defendant controls the  
3 trademarks, not Rupert Murdoch. It says so right here.

4 THE COURT: Thank you, Mr. Hoffenberg. You don't have  
5 to repeat yourself.

6 MR. HOFFENBERG: Thank you, sir. Thank you, sir.

7 THE COURT: Mr. Zuckerbrod, do you wish to address the  
8 defendant New York Post Publishing, Inc., claims?

9 MR. ZUCKERBROD: Your Honor, I was only retained  
10 yesterday. I have not had an opportunity to review the  
11 pleadings.

12 THE COURT: Thank you.

13 Ms. Handman.

14 MS. HANDMAN: Yes, your Honor. Just a few points.

15 That document that Mr. Hoffenberg refers to, docket  
16 item 224, very expressly says there was an order signed 9/14/93  
17 granting motion approving and authorizing the debtor,  
18 that's New York Post Company, to enter into an asset purchase  
19 agreement with NYP Holdings, Inc., for the sale of assets to  
20 NYP free and clear of all liens, claims, interest, and  
21 encumbrances. And if you look at the asset agreement itself,  
22 it says that the assumed liabilities exclude any debts owed to  
23 Towers Financial and that there is an escrow account that is  
24 meant to cover the Towers Financial debt. And Mr. Hoffenberg  
25 has presented nothing that suggests that there was a lien that

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1 was ever enforced or foreclosed on, nothing. So that same  
2 docket has exactly the evidence of where we stand and there is  
3 no need to go back to the bankruptcy court. It is clear. And  
4 that has been the business of operation since 1993 when this  
5 deal was signed and approved by the bankruptcy court.

6 Mr. Hoffenberg's -- this document which we have just  
7 seen for the first time and have not read, but it involves  
8 Towers Financial bankruptcy. Indeed, the handwritten language  
9 that Mr. Hoffenberg represents is the court's says that his  
10 presence is not necessary and that the alleged assets are not  
11 the property of the estate and have already been fully  
12 administered and that the presence of Mr. Hoffenberg before  
13 this court would be of no assistance and is unnecessary. At  
14 that point in time, Mr. Hoffenberg was in federal prison and I  
15 presume that was why that was mentioned.

16 As to any agreement between Mr. Hoffenberg and  
17 Mr. Murdoch, Mr. Hoffenberg throughout has said that and never  
18 produced one single document to support any such agreement. We  
19 have absolutely no reason to believe that such an agreement  
20 exists. In any event, it was the asset purchase agreement is  
21 what controls, and that was in September of 1993.

22 And I have to go back to the basic thing, that we are  
23 here on a trademark infringement claim. The use of the  
24 trademark is what matters. The use has been by NYP Holdings  
25 and its predecessor for decades. New York Post Publishing,

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1 Inc., has no right to put up an infringing, confusing Web site  
2 that makes use of New York Post trademark, and that is what we  
3 are here for, not to relitigate fantasies about the past, but  
4 to look at what we are here for now. And I will say the  
5 assignment was filed -- of the trademark from New York Post  
6 Company to NYP Holdings was filed in the trademark registry,  
7 and that's the exhibit that we also attached to our reply.

8 Do you have any questions, your Honor?

9 THE COURT: No, no further questions. Thank you.

10 I am going to close this proceeding.

11 Upon review of the record that has been submitted by  
12 the parties and the arguments and other material presented in  
13 this hearing this morning, I find that the plaintiffs have made  
14 a compelling case that entitles them to injunctive relief. I  
15 find that they have made a case for irreparable harm and the  
16 likelihood of success on the Lanham Act and trademark claims as  
17 well as the cyber piracy claims and the other trademark  
18 infringement claims that they have submitted in their papers.

19 I find that the *Polaroid* factors here all weigh in  
20 favor of a determination of likelihood of confusion. I am  
21 persuaded that there is sufficient showing as well of bad faith  
22 on this record and that the balance of hardships weigh in favor  
23 of the plaintiff.

24 I, therefore, will issue a cease-and-desist order  
25 directing the defendant to cease using the New York Post

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1 trademark and domain name, and I will direct the plaintiff to  
2 prepare an appropriate order memorializing the court's  
3 determination this morning.

4 A full ruling setting forth the court's reasoning and  
5 findings will issue shortly.

6 I thank you. Have a good day and good weekend.

7 MR. HOFFENBERG: May I?

8 THE COURT: Yes, Mr. Hoffenberg.

9 MR. HOFFENBERG: Thank you, your Honor.

10 The name New York Post Publishing, Inc., is a  
11 corporation that I have owned since 1993. I respect the  
12 court's order this morning, but I don't believe the court is  
13 saying that that name doesn't belong to me. I think you are  
14 recognizing that I own the corporation and you are only asking  
15 me not to use that name as a presentation in confusion with the  
16 other New York Post, which I am willing to understand and  
17 interpret clearly. But you are not saying that I am prohibited  
18 in free speech of saying that I own New York Post Publishing,  
19 Inc., are you, Judge?

20 THE COURT: The order will make clear exactly what the  
21 court is saying. You cannot use that name in violation of the  
22 Lanham Act. That is the bottom line.

23 Thank you.

24 MR. HOFFENBERG: Thank you, sir.

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